CMPMO No.159 of 2007.

13.7.2007. Present: Mr. Neel Kamal Sharma, Advocate, for the petitioner.

Mr. Romesh Verma and Mr. Vikas Rajput, Advocates, for the respondents-caveators.

Caveat No.504 of 2007.

Allowed and disposed of.

CMPMO No.159 of 2007.

With the consent of the parties, this petition is being disposed of at the motion hearing stage without it being formally admitted to hearing.

The issues involved for consideration in this case are, to say the least based on some peculiar facts and circumstances. In the past there was a litigation between the parties which resulted in the passing of a compromise decree. The compromise (Ex.CA in that suit) is a document which, again to say the least is not at all happily worded. Whether this compromise created any right in favour of the respondents or extinguished any right of the petitioner qua the present suit land would thus be an issue which ultimately has to be decided in the present suit. The fact remains that in the present suit filed by the petitioner, the

petitioner conveniently failed to make any mention about the passing of the aforesaid compromise decree in the aforesaid previous suit.

Mr. Verma, learned counsel appearing for the respondents has stated before me that the respondents raised some construction over the disputed portion of the land upto one roof level. On the second floor even though the slab has not been laid the shuttering has been fixed. In this view of the matter, therefore, I feel that keeping the construction without it being put to any use will not serve any purpose. On a totality of circumstances, therefore, I dispose of this petition and modify the impugned order as hereinbelow:-

Except what is indicated hereinbelow the parties to the suit shall maintain status quo until the disposal of the suit.

If any construction has been raised on spot by the respondents, the respondents shall be allowed to complete this construction. The only consideration in issuing this direction is to make sure that the construction raised is not wasted and is put to proper use.

The respondents shall be allowed to complete the construction only on the condition that the learned trial Court appoints a local Advocate Commissioner, assisted by a local Assistant Engineer of HP PWD who shall both visit the spot and find out whether any incomplete construction

exists on spot or not. If based upon the report submitted by these two Commissioners, the learned trial Court is convinced that incomplete construction does exist on spot, it shall pass an order permitting the respondents to complete only the incomplete construction and not to raise any other or further construction It goes without saying at the risk of repetition that fresh construction in any case shall not be raised by the respondents and this permission only relates to the completion of the existing incomplete construction.

The aforesaid is subject to the condition that the respondents file an undertaking in the trial Court to the effect that if ultimately the suit of the petitioner-plaintiff is decreed in her favour, the respondents shall demolish the aforesaid construction and shall not claim any equity in their favour.

The petition is disposed of.

CMPs No.513 and 514 of 2007.

In view of the disposal of the main petition, both the applications shall stand disposed of.

Dasti copy on usual terms.

13th July, 2007. (V.K. Gupta), C.J.
(tr)